

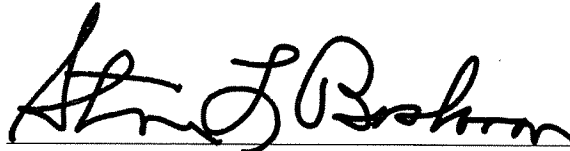
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<i>Emily B. Caudill</i> REGULATIONS COMPILER

STATEMENT OF EMERGENCY
200 KAR 15:010E

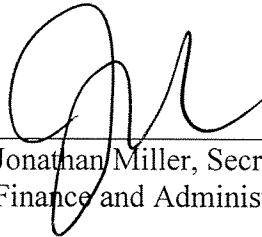
Temporary Suspension of Mandatory Pool Allocation Designations

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis due to current market dislocation in the municipal bond market, particularly for state qualified housing and student loan issuers and the unknown future impact of pending Federal legislative proposals aimed at combating this dislocation.

It is necessary to promulgate this administrative regulation on an emergency basis because of the credit freeze in the municipal market place for qualified housing and student loan bonds and for the efficient use of the federal private activity volume cap resource under existing statute. Current regulations provide that eighty percent (80%) of available volume cap must be allocated to state issuers whom operate in the aforementioned markets and are currently unable to utilize additional volume cap. As there is a three year limit on the carryforward of unused volume cap, over allocating the volume cap to the state issuers would result in a strong possibility of loss through attrition. Should local issuers be unable to utilize the additional cap provided under the existing statute and emergency regulation it will revert to the state issuer pool to be allocated as carryforward.



Steven L. Beshear, Governor



Jonathan Miller, Secretary
Finance and Administration Cabinet

1 **FINANCE AND ADMINISTRATION CABINET**

2 **Office of the Secretary**

3 **(Emergency Amendment)**

4 200 KAR 15:010E. Formula for allocation of private activity bonds.

5 RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.286

6 STATUTORY AUTHORITY: KRS 103.286(3), 26 U.S.C. sec. 146

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) requires the Secretary of
8 the Finance and Administration Cabinet to promulgate administrative regulations to provide for
9 the allocation of the state ceiling for the issuance of private activity bonds. This administrative
10 regulation establishes the formula for that allocation.

11 Section 1. Definitions.

12 (1) “Affected bonds” means “private activity bonds” as defined by 26 U.S.C. sec. 146,
13 excluding any obligations not subject to the state ceiling under the Code.

14 (2) “Allocation” means the amount of volume cap that was approved by the Kentucky
15 Private Activity Bond Allocation Committee for a local issuer or state issuer.

16 (3) “Available volume cap” means the amount of volume cap remaining from the local
17 issuer pool at the close of business on June 30.

18 (4) “Bonds” is defined by KRS 103.200(2).

19 (5) “Committee” means the Kentucky Private Activity Bond Allocation Committee.

20 (6) “Eligible available volume cap applicants” means state issuers and local project
21 applicants who file a notice of intent to issue relating to available volume cap.

1 (7) "Issued" means delivered and paid for.

2 (8) "Issuer" or "issuing authority" means the public or authorized governmental body
3 which issues the bonds.

4 (9) "Local issuer" or "local issuing authority" means a public or authorized governmental
5 body which issues bonds on behalf of a local project.

6 (10) "Local issuer pool" means the portion of the state ceiling from which allocations for
7 local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity
8 which is not a state agency.

9 (11) "Local project" means a project, other than a project for creation or financing of
10 residential single family or multi-family affordable housing which are included under the "state
11 projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state
12 agency.

13 (12) "Lottery" means any process of random selection utilized to allocate available
14 volume cap and which is conducted:

15 (a) By staff at a public meeting of the Committee; and

16 (b) In accordance with Section 5 of this administrative regulation.

17 (13) "Staff" means the Office of Financial Management of the Finance and
18 Administration Cabinet.

19 (14) "State ceiling" means the cap imposed by 26 U.S.C. sec. 146 on private activity
20 bonds issued within the Commonwealth of Kentucky.

21 (15) "State issuer pool" means the portion of the state ceiling from which allocations for
22 state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state
23 agency.

1 (16) "State project" means a project, including creation or financing of residential single
2 family or multi-family affordable housing projects and student loans, for which bonds are issued
3 by, on behalf or for the benefit of a state agency.

4 (17) "Year" shall mean calendar year.

5 ~~[Section 2. Allocation of State Ceiling for Affected Bonds. On the first business day of~~
6 ~~January of each year, the state ceiling for affected bonds shall be divided into two (2) separate~~
7 ~~pools:~~

8 (1) ~~Eighty (80) percent of the state ceiling shall be allocated to the state issuer pool until~~
9 ~~December 15th. On or after December 15th, the remainder of any unallocated portion of the state~~
10 ~~issuer pool shall be allocated by the Committee as carryforward.~~

11 (2) ~~Twenty (20) percent of the state ceiling shall be reserved for the local issuer pool until~~
12 ~~June 30th or 90 calendar days from the date of allocation. On July 1st, the remainder of any~~
13 ~~unallocated portion of the state ceiling shall become available volume cap.~~

14 ~~Section 3. Allocations For Local Projects. Allocations for local projects shall be subject~~
15 ~~to the following limitations:~~

16 ~~A local project, including a local project that is related to other local projects by virtue of~~
17 ~~the common or complimentary utilization of state ceiling, shall not receive an allocation of state~~
18 ~~ceiling in an amount greater than twenty five (25) percent of the local issuer pool; however, local~~
19 ~~projects applied for by eligible available volume cap applicants shall also qualify for additional~~
20 ~~available volume cap allocations after July 1st in an amount not greater than twenty five (25)~~
21 ~~percent of the local issuer pool.]~~

1 Section 2 [4]. Evaluation of Local Projects. Local projects seeking allocation from the
2 state ceiling shall be ranked based on evaluation of the factors listed, and allocated according to
3 the rankings:

- 4 (1) Creation of new jobs, as well as preservation of existing jobs, by the project;
- 5 (2) Average hourly wage and benefits of new employees proposed for the project;
- 6 (3) Capital investment in Kentucky being made as a result of the project;
- 7 (4) Unemployment rate in the county of the project;
- 8 (5) State economic development incentives awarded to the company, if any; and
- 9 (6) Previous state ceiling allocated to the benefited borrower within the last ten (10)
10 years.

11 Section 3 [5]. Allocation of Available Volume Cap. Allocations from the available
12 volume cap shall be made to eligible volume cap applicants in ~~[an amount not greater than~~
13 ~~twenty-five (25) percent of]~~ the local issuer pool, as follows:

14 (1) First, a lottery shall be conducted to determine the order of disbursement to local
15 projects which did not receive an allocation from the local issuer pool.

16 (2) Second, to the extent there is remaining available volume cap, a lottery shall be
17 conducted to determine the order of disbursement to local projects which received an allocation
18 from the local issuer pool, whether the allocation was issued or not.

19 (3) Finally, any remaining available volume cap shall be allocated by the committee to
20 one (1) or more state issuers for use during the year or as carry forward; and

21 (4) The committee shall choose a reasonable method of random selection for the lottery
22 process.

1 Section 4 [6]. Committee Meetings. The committee shall meet as necessary to allocate
2 the state ceiling. Special meetings may be held on the call of the committee chairman.

3 Section 5 [7]. An issuer shall obtain a confirmation authorizing the issuance of affected
4 bonds by filing with the committee a written notice of intent to issue bond (“Notice of Intent”
5 form). The committee shall issue a confirmation (“Confirmation of Allocation of State Ceiling”
6 form) allocating to the issuer a portion of the state ceiling. Affected bonds shall not be issued by
7 any issuer prior to receiving confirmation by the committee of an allocation under the state
8 ceiling. Confirmations shall be dated and numbered in the order issued.

9 Section 6 [8]. Notice of Issuance. Local Projects. Confirmation Effective for Ninety (90)
10 Days. A confirmation shall expire ninety (90) calendar days from the date of allocation by the
11 committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a
12 notice that the affected bonds have been issued (“Notice of Issuance” form). The notice of
13 issuance may be sent by any means but the committee shall receive it by the close of business on
14 the 90th day after the confirmation. If the notice period ends on a Saturday, Sunday, or other day
15 upon which state offices are closed for business, the notice period shall be extended to the next
16 business day.

17 Section 7 [9]. Notice of Issuance. State Projects. Confirmation effective until December
18 15. The issuer shall deliver to the committee a notice of issuance. The notice of issuance may be
19 sent by any means but the committee shall receive it by the close of business on or before
20 December 15. If the notice period ends on a Saturday, Sunday, or other day upon which state
21 offices are closed for business, the notice period shall be extended to the next business day.

22 Section 8 [10]. Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85)
23 Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts

1 less than the confirmation; if the face amount of the issued bonds is not less than eighty-five (85)
2 percent of the original confirmation. The issuer shall notify the committee if the bonds issued are
3 within the eighty-five (85) percent requirement and the unused part of the allocation shall revert
4 to the local issuer pool, or if this reversion occurs after June 30th of any year, the amount shall
5 become available volume cap.

6 Section 9 [~~11~~]. Carry Forward Allocations. (1) In any year, the committee shall allocate
7 any remaining state ceiling as carry forward allocations if the aggregate amount of affected
8 bonds issued during the year is less than the state ceiling on December 15th. An issuer shall, in
9 order to receive a carry forward allocation, file with the committee by December 15th:

10 (a) A notice of intent; and

11 (b) A carry forward election of unused private activity bond volume cap (U.S. Treasury
12 Department Form 8328).

13 (2) The carry forward of any unallocated portion of the state ceiling may be for any
14 purpose authorized by 26 U.S.C. sec. 146(f).

15 (3) The committee shall issue a confirmation of the notice and election to carry forward
16 (“Confirmation of Carry Forward Allocation of State Ceiling” form).

17 (4) The committee may consider, but shall not be required to allocate, a carry forward
18 notice or election filed after December 15th.

19 Section 10 [~~12~~]. The committee shall not confirm a notice of intent after the aggregate
20 amount of bond confirmations, including carry forwards, have reached the state ceiling for that
21 year.

Section 11 [13]. Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project shall not:

(a) File a notice of intent unless the issuance will be made within the ninety (90) day confirmation period established in Section 8 of this administrative regulation; or

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a local project.

(3) An issuer of a state project shall not:

(a) File a notice of intent unless the issuance will be made by December 15; or

(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a state project.

Section 12 [14]. Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except in cases of surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 13 [15]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Intent" application (March 2006);

(b) "Confirmation of Allocation of State Ceiling" (March 1998);

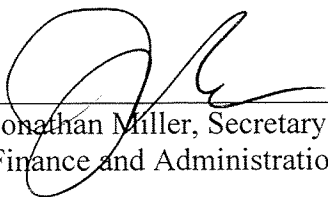
(c) "Confirmation of Carry-forward Allocation of State Ceiling" (March 1998);

(d) "Notice of Issuance" (March 1998); and

1 (e) “U.S. Treasury Department Form 8328”.

2 (2) This material may be inspected, copied or obtained, subject to applicable copyright
3 law, at the Office of Financial Management, 76 Capitol Annex, Frankfort, Kentucky 40601,
4 Monday through Friday, 8 a.m. to 4:30 p.m.

Approved:



Jonathan Miller, Secretary
Finance and Administration Cabinet

Date 1/22/09

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on March 23, 2009 at 10 a.m. at the Finance and Administration Cabinet, 702 Capitol Avenue, Capitol Annex Room 386, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by March 16, 2009, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 200 KAR 15:010E.

Contact person: DeVon Hankins, Policy Advisor, Finance and Administration Cabinet, Room 392 Capitol Annex, Frankfort, Kentucky 40601, Phone: (502) 564-6660, FAX: (502) 564-9875.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation ensures compliance with federal regulations relative to debt ceiling on “private activity” bonds by establishing a process for allocation of the state ceiling for the issuance of private activity bonds.

(b) The necessity of this administrative regulation: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the process for that allocation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes criteria for efficient allocation of resources within the parameters established by federal tax law and the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides the process for allocation of the state ceiling for the issuance of private activity bonds to assist the committee in the allocation process. Local affordable housing projects will be allocated cap through the state affordable housing finance agency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This emergency regulation temporarily suspends requirements that the Kentucky Private Activity Bond Allocation Committee allocate 80% of available volume cap to the state issuer pool allowing reversion to the statutory minimum requirement of only 60%

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary due to the current municipal market dislocation in the student loan and qualified housing bond markets. State issuers have sufficient private activity volume cap resources to meet projected demand within existing statutory constraints should the market

conditions return to normal. This regulation will decrease the amount of cap mandatorily assigned to the state issuer pool and thereby make additional resources available to local issuers, should there be demand. This will also lower the probability that a portion of the volume cap would be lost to attrition.

(c) How the amendment conforms to the content of the authorizing statutes: The applicable statute contains minimum allocation percentages that will apply rather than the amounts promulgated through the previous regulations.

(d) How the amendment will assist in the effective administration of the statutes: Pursuant to KRS 103.286(2) this change will assist in the efficient issuance of private activity bonds by lowering the probability that portions of available volume cap are lost through attrition.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At present the Commonwealth has two (2) state issuers, The Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation. Any business or organization with qualified solid waste or manufacturing projects to be based in the Commonwealth may qualify for local issuer status.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Proposed changes to the regulation will decrease the amount of private activity volume cap authority available to the state issuers while increasing the amount to local issuers. If the additional volume cap is not utilized by local issuers the remaining amount of volume cap would then be returned to the state issuer pool and allocated as carryforward.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost on continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)
Tiering is not applied as this regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 200 KAR 15:010E Contact Person: DeVon Hankins

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Housing Corporation, Kentucky Higher Education Student Loan Corporation, and county and city governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The applicable federal statute is the Tax Reform Act of 1986, 26 U.S.C. Sec 146. Kentucky Statutes include KRS 103.200, 103.2101 and 103.286.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? No additional costs

(d) How much will it cost to administer this program for subsequent years? No additional costs

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Positive Impact. The allocation of additional Private Activity bonds to local authorities would result in additional economic activity in the jurisdiction that is acting as a conduit for the bonds and the state and local government should benefit to an unknown amount.

Expenditures (+/-): No additional expenditures will be incurred.
Other Explanation: